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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,191	02/25/2004	Roger S. Kitzis	J667-001 DIV	2378

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EXAMINER

ESTREMSKY, GARY WAYNE

ART UNIT	PAPER NUMBER
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3676

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Office Action Summary</p>	<p>Application No.</p> <p>10/786,191</p>	<p>Applicant(s)</p> <p>KITZIS, ROGER S.</p>	
	<p>Examiner</p> <p>Gary Estremsky</p>	<p>Art Unit</p> <p>3676</p>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 6-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restriction

Applicant's election of the embodiment shown in Fig's 14,15 is noted. Argument that the several species are unified due to their patentable nature is not clear or persuasive, especially prior to examination. The election of species requirement is repeated and made Final.

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I – Fig's 1-3

Species II – Fig's 4,5

Species III – Fig's 6-11

Species IV – Fig's 12,13

Species V – Fig's 14,15

Species VI – Fig's 16,17

Species VII – Fig 18

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, some claims appear to be generic to at least some of the embodiments.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added.

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It is requested that any generic claims and the embodiments they read on be clearly indicated in the event that allowable generic subject matter is indicated. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The specific details of the several embodiments are distinct whereby the search for one is not required for the others and prior to examination, it is the examiner's position that the particular structures of the different embodiments are not obvious one from the other, but are patentably distinct, as the claims are drawn thereto. As a practical matter, search and consideration of claims drawn specifically to the many disparate structures associated with the many embodiments in this one Application would place undue burden on the examiner.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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As part of the response filed 11/1/04, Applicant indicates that claims 1, 2, 11, and 12 read on the invention. However, it appears that claims 1-5, 11, and 12 read on the invention and so, are examined hereinbelow. Applicant's remarks on scope of the claims is requested. Claims 6-10 are withdrawn from further consideration at this time.

Claim Objections

1. Claim 2 is objected to because of the following informalities:

Claim 2 should be amended to -further comprising the locking arrangement in combination with the receptacle and cover having overlapping parts with aligned holes therein- since the claim implicitly includes same through recitation of "including a bolt extending from the handle and at least partly into the aligned holes". The proposed amendment would make the language of the claim more consistent with the actual scope of the claimed invention.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
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The term "bolt" is used with respect to non-equivalent structures in the written description of the embodiments of the invention. See Fig 18 and corresponding description of part 16 (which is generally consistent with art-accepted meaning of the term "bolt"). Also see the written description of part 16 and its illustration in Fig's 14,15. It is not clear why the term "bolt" is used in reference to the illustrated part as contrasted with part 22. It is not clear which structure Applicant is referring to.

bolt >noun 1 a long metal pin with a head that screws into a nut, used to fasten things together. 2 a bar that slides into a socket to fasten a door or window. 3 the sliding piece of the breech mechanism of a rifle.

It is noted that the portion of 16 which is illustrated as being partially inserted in one of the aligned holes is not the part for function of 'fasten'. But especially in this case, due to conflicting use of the term throughout the disclosure, it is suggested that the written description and the claims be amended as appropriate to be consistent with art-accepted meaning of the term "bolt".

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1, 4, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,322,300 to Mistrater.

Mistrater '300 teaches Applicant's claim limitations including : a "handle" - including 25 for example, an "actuator" - including 16,22, "expansion means" - including 14, "biasing means" - 19, "release means" - 18. One of ordinary skill in the art would recognize that the structural arrangement of 18 and the balance of the device result in the inherent ability to perform the recited function defining the claimed release means. Preamble recitation of intended use of the claimed invention which structure is defined in the body of the claim does not define any structure that can be relied upon to patentably distinguish from the well known structure of the prior art. See MPEP 2114. It has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951). It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). The law of anticipation requires that a distinction be made between the invention described or taught and the invention claimed. It does not require that the reference "teach" what the subject patent teaches. Assuming that a reference is properly "prior art," it is only necessary that the claims under consideration "read on" something disclosed in the reference, i.e., all limitations of the claim are

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found in the reference, or "fully met" by it. *Kalman v. Kimberly-Clark Corp.*, 218 USPQ 789. Claims in a pending application should be given their broadest reasonable interpretation. In re Pearson, 181 USPQ 641 (CCPA 1974).

6. Claims 1-5, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 3,426,399 to Jones.

Jones '399 teaches Applicant's claim limitations including : a "handle" - including 57,58, an "actuator" - including 20, "expansion means" - including 26,29, "biasing means" - 50, "release means" - disassembly of lower (as shown on the face of the Patent) components by unthreading inherently allows recited function whereby that threaded structure is equivalent to the structure disclosed by Applicant for performing the recited function.

As regards claim 2, the unsplit portion (below 33 in Fig 3) reads on "bolt" in view of Applicant's particularly broad disclosure of that claimed element.

As regards claim 3, comparison of Fig's 1,3 indicate that inserted end comprises a "flexible sleeve".

As regards claim 5, the actuator comprises a V-shaped member integrally connected as illustrated in Fig 1.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to

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be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,322,300 to Mistrater in view of U.S. Pat. No. 5,320,364 to Mistrater.

Although Mistrater '300 does not illustrate structure corresponding to the "V-shaped member" limitation, Mistrater '364 illustrates embodiment of Fig 10 wherein the end has a "V-shape" as claimed. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the device of Mistrater '300 with an actuator having a V-shaped member integrally connected as illustrated in Fig 10 of Mistrater '364 in order to exert vertical and outward forces to the expansion means as stated by Mistrater '364.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 2,353,248 to Lamb.

U.S. Pat. No. 2,372,904 to Mccarthy.

U.S. Pat. No. 5,042,888 to Shinjo.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is

~~703-308-0494. The examiner can normally be reached on M-Thur 7:30-6.~~

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gary Estremisky
Primary Examiner
Art Unit 3676
